

Agenda Item	
A-1	<p>Pledge of Allegiance</p> <p>Wishing to be heard during the Open Comment Period was Linda Gilsrud, Human Resources Director for the City of Rochester. She was present to ask the Council to honor and recognize the work of the Diversity Program Committee. She said that the City and County are fortunate to have the Committee which works to organize resources to contribute to the diverse workforce of the City/County and the Community. The Committee recently published their first Bi-Annual Report for 2003-2004 recounting the opportunities that they organized as a part of their mission and programs.</p> <p>Wishing to be heard during the Open Comment Period was JoAnn Peterson, Public Library and Committee member of the Diversity Program. She asked the Council to turn to the portion of the Bi-Annual Report dealing with the history of the Committee. She said that the diverse population of the City and County is constantly changing. Ms. Peterson said that the population of Olmsted County has almost doubled in the past four decades and the minority population grew 181 percent for 2000. Ms. Peterson spoke on other areas of interest in the Bi-Annual Report including the purpose, vision and mission of where they are going with the Committee. The aims, goals and measurements are also a part of the Report. Councilmember Means worked on the preparation of the Diversity Council Program brochure. She asked that the Council continue their support on their efforts to educate County and City personnel on diversity issues.</p> <p>Wishing to be heard during the Open Comment Period was Leona Hansen, 20 11th Street N.E. Ms. Hansen talked about the entrance across from her property for the McDonald's Restaurant. She said that 12th Street N.E. will be closed next year and is very concerned that the McDonald's traffic will be using 11th Street. There is a lot of traffic at this time and it will only increase, as will the trash, when the summer season comes. President Hanson asked that Ms. Hansen meet with Councilmember Nowicki and representatives of the McDonald's restaurant to see if a solution can be reached.</p>
B-1	<p>President Dennis Hanson called the meeting to order at 7:00 P.M. with the following members present: Councilmembers Pat Carr, Ed Hruska, Marcia Marcoux, Jean McConnell, Sandra Means, Bob Nowicki. Absent: None. Mayor Ardell F. Brede was not in attendance.</p>
D-1-37	<p>Councilmembers Marcoux moved, Hruska seconded, to approve the following consent agenda items.</p>
D-1	<p>Approved the minutes of the February 23, 2005, and March 7, 2005, recessed and regular meetings.</p>
D-2	<p>See at end of D Items.</p>

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RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
 City of Rochester, New York
 Regular Adjourned Meeting No. 8, March 21, 2005

Agenda Item	
D-3	Approved the use of \$40,450 from the Future Construction Account to fund the proposed reconfiguration of Mayo Civic Center Parking due to the demolition of the former Art Center Building.
D-4	Approved to initiate annexation of the 20 acre city owned parcel located along the south side of the WR-6A flood control reservoir to allow the city to prohibit the operation of motorized watercraft upon water bodies within the City. (Parcel Number 64.34.34.045477)
D-5	Adopted Resolution No. 087-05 approving the amended City of Rochester's CDBG Single Family Rehabilitation Loan Program Guidelines with staff recommended revisions.
D-6	Adopted Resolution No. 088-05 directing the City Clerk to publish notice of public hearing for April 4, 2005 to consider the proposed amendment to the Home Rule Charter, Sections 7.03, subd. 1 (removal of employees) and 7.021 (limitations on continued service).
D-7	See at end of D Items.
D-8	Adopted Resolution No. 089-05 awarding the bid to Premier Electrical Corporation in the amount of \$3,567,562.73 for Project No. J-6971 "2005 Airfield Runway and Electrical Improvements for the Rochester International Airport".
D-9	Adopted Resolution No. 090-05 awarding the bid to Weber, Inc. for Project No. J-6971 "2005 Airfield Lighting Building at the Rochester International Airport" in the amount of \$275,800.00.
D-10	Adopted Resolution No. 091-05 awarding the bid to Premier Electrical Corporation for Project No. J-6971 "2005 Runway 13-31 Navigational Aids Construction at the Rochester International Airport" in the amount of \$648,672.00.
D-11	Approved the transfer of the On-Sale Exclusive and Sunday Liquor Licenses for Todd Powers DBA Pint's Pub, from 503 11 th Avenue N.W. to 611 11 th Avenue N.W. effective April 1, 2005, contingent upon the required permits, licenses and departmental approvals.
D-12	Approved the transfer of the On-Sale Exclusive and Sunday Liquor Licenses for JanAnn Meade DBA Kings Crossing Bar and Grill from 921 Civic Center Drive N.W. to 915 21 st Avenue S.E., effective April 1, 2005, contingent upon the required permits, licenses and departmental approvals.
D-13	<p>Approved the following licenses and miscellaneous activities:</p> <p><u>Sign Installers</u></p> <p>Nordquist Sign Company, Inc., Minneapolis</p>

Agenda Item	
	<p><u>Sound Amplification Permit</u> SE Minnesota Alliance of Peacemakers – Stop War-Making; Start Peace-Making Rally – March 19, 2005 – Peace Plaza- 10:00 AM to 4:00 PM (prior approvals: Councilmembers Carr, Hruska, Marcoux and President Hanson)</p>
	<p><u>Miscellaneous Activities</u> SE Minnesota Alliance of Peacemakers – Stop War-Making; Start Peace-Making Rally – March 19, 2005 – Peace Plaza- 10:00 AM to 4:00 PM (prior approvals: Councilmembers Carr, Hruska, Marcoux and President Hanson)</p>
D-14	<p>Adopted Resolution Nos. 092-05 and 093-05 accepting the bid of Shamrock Enterprises and Milestone Materials for 2005 Season Supply of Aggregate Materials as outlined in the Request for Council Action dated March 21, 2005.</p>
D-15	<p>Adopted Resolution No. 094-05 accepting the bid of Rochester Sand and Gravel for 2005 Season Supply of Bituminous Materials as outlined in the Request for Council Action dated March 21, 2005.</p>
D-16	<p>Adopted Resolution No. 095-05 accepting the bid of Rochester Ready-Mix for 2005 Season Supply of Ready-Mixed Concrete as outlined in the Request for Council Action dated March 21, 2005.</p>
D-17	<p>Adopted Resolution No. 096-05 accepting the bid of Koch Materials Company for 2005 Season Supply of Asphalt Materials as outlined in the Request for Council Action dated March 21, 2005.</p>
D-18	<p>Approved Accounts Payable in the amount of \$4,924,338.28 and Investment Purchases of \$4,495,815.56.</p>
D-19	<p>Adopted Resolution No. 097-05 approving a general wage increase effective January 1, 2006, to non-exempt, non-contract employees and implement other applicable benefit changes.</p>
D-20	<p>Adopted Resolution No. 098-05 approving the IAFF Local #3908 Fire Supervisors 2005-2007 Agreement.</p>
D-21	<p>Adopted Resolution No. 099-05 approving the Wetland Delineation and Replacement Plan for Morris Hills Subdivision with one condition.</p>
D-22	<p>Adopted Resolution No. 100-05 approving the Wetland Delineation and Replacement Plan for Morris Hills North Subdivision with one condition.</p>
D-23	<p>Adopted Resolution No. 101-05 entering into a supplemental agreement with MnDOT on Project No. J-2247 "TH52 reconstruction project from 85th Street NW to TH63 for Fiber Optic Cable for Traffic Signal interconnect" at a City cost of \$126,681.36.</p>
D-24	<p>See at end of D Items.</p>

RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA
Regular Adjourned Meeting No. 8 – March 21, 2005

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Agenda Item	
D-25	Adopted Resolution No. 102-05 authorizing the City Clerk to advertise for bids for Project No. M5-08 (J-7741) "Storm Sewer Along 9 th Avenue NW between Civic Center Drive and Cascade Creek".
D-26	Adopted Resolution No. 103-05 adding and deleting street segments as listed on the Request for Council Action dated March 21, 2005.
D-27	Adopted Resolution No. 104-05 approving the feasibility report for Project No. 6219-4-00 (J-9707) "Widening 19 th Street N.W. from CSAH 22 (West Circle Drive) to 2,500 feet West" and recommending its construction in 2005 if all right-of-way issues can be resolved in a timely manner.
D-28	Adopted Resolution No. 105-05 approving the City/Owner Contract with West 19 Development LLC and Griffin Construction Company, LLP for Project No. J-5167 "Public Improvements to Serve Fox Trails Second".
D-29	Adopted Resolution No. 106-05 approving the City/Owner Contract with Rochester Montessori School, Inc. and Bob Braaten Construction, Inc. for Project No. J-5170 "Public Improvements to Serve Phase 1 Development of the Rochester Montessori School Property".
D-30	Adopted Resolution No. 107-05 approving the City/Owner Contract with BBB Development LLC and Elcor Construction, Inc. for Project No. J-5148 "Public Improvements to Serve Ridgeview Manor Fourth".
D-31	Adopted Resolution No. 108-05 approving an engineering agreement with Bonestroo Rosene Anderlik & Associates in the amount of \$28,900 for Project No. J-4008 "Storm Water Management near Cascade Pass".
D-32	Adopted Resolution No. 109-05 awarding a contract to Gillig Corporation for the purchase of up to three buses at a cost of \$288,223.00 per unit pending approval of Federal Transportation Administration funds.
D-33	Adopted Resolution No. 110-05 approving the Development Agreement with Sovereign Companies of Minnesota, LLC for Stonegate Summit (Rocky Creek Townhomes GDP #193).
D-34	See at end of D Items.
D-35	Adopted Resolution No. 111-05 approving an engineering service agreement with McGhie & Betts, Inc. in the amount of \$50,765.00 for Project No. J-6527 "Design of a Storm Water Management Pond near Hart Farms".
D-36	See at end of D Items.
D-37	Adopted Resolution No. 112-05 approving Change Order No. 2 for Project No. J-4390 "2004 Influent Pump Station Substructure" for Sheehy Construction Company, Inc. of St. Paul in the amount of \$428,663.04.

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D-38	<p>Approved the expenditure of Storm Water Utility funds in the amount of \$12,200 to complete a pilot non-degradation study in the Kings Run subwatershed.</p> <p>Ayes (7), Nays (0). Motion carried.</p>
D-2	<p>Councilmembers congratulated Barbara Huberty, Public Works Department, and Elizabeth Warfield, Public Library, as award winners for the 7th Annual "Outstanding Women in Leadership Roles". Councilmember Nowicki said they deserve the Council's and City's recognition. Councilmember Means also wanted to thank Dave Mueller from Olmsted County and Linda Gilsrud from the City of Rochester for their leadership, sponsorship and support of the Diversity Committee. Ms. Huberty and Ms. Warfield were introduced by JoAnn Peterson, Diversity Committee, to the Council and audience. There will be an award recognition luncheon on March 22, 2005.</p>
D-7	<p>Councilmembers Marcoux moved, Hruska seconded, to table the awarding of the bid for Project No. J-6971 "2005 Airfield Runway and Electrical Improvements at the Rochester International Airport" until the March 28, 2005, recessed meeting. Ayes (7), Nays (0). Motion carried.</p>
D-24	<p>Councilmember Nowicki noted that the meeting for the final project design was held on March 16 rather than to be held in May as noted on the Request for Council Action.</p> <p>Councilmembers Nowicki moved Marcoux seconded, to adopt Resolution No. 113-05 authorizing the City Clerk to advertise for bids for Project No. M4-40 (J-7733) "Construct Sanitary Sewer in 12th Street North from West Silver Lake Drive NE to 2nd Avenue NW and North Along 2nd Avenue NW to Cascade Creek". Ayes (7), Nays (0). Motion carried.</p>
D-34	<p>Councilmembers Nowicki moved, Carr seconded, to table the discussion on the Development Agreement with West 80 Development, LLC until the public hearing. (See discussion under Item E-6).</p>
D-36	<p>The Public Works Department requested that action on the Memorandum of Understanding between the Minnesota Department of Transportation and the City of Rochester for the TH52/65th Street Interchange Project be removed at this time.</p>
E-1	<p>A Continued Hearing on Vacation Petition #05-02 by Crossroads College to vacate utility easements within Lot 1, Block 1, located along the north side of 20th Street S.W. and along the south side of Maywood Road S.W.</p> <p>Staff recommended that the vacation request be continued to the June 6, 2005 meeting to allow the owner to provide a Development Agreement.</p> <p>No one wished to be heard at this time.</p>

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E-2	<p>Councilmembers Marcoux moved, Means seconded, to continue the Hearing on Vacation Petition #05-02 by Crossroads College to the June 6, 2005, meeting. Ayes (7), Nays (0). Motion carried.</p> <p>A Hearing on General Development Plan #251, initiated by the Rochester Common Council for the Cascade Lake Park Master Plan located south of TH14, north of Country Club Road, east of West Circle Drive and west of the West Zumbro Addition.</p> <p>Wishing to be heard was Joan DeWitz, 3268 Lake Street N.W. She asked for assurances from the Council that the water in Manor Woods Lake would not dry up if the water levels in Cascade Lake subsided. She asked that the neighbors be kept informed when something is happening in the area as well.</p> <p>Wishing to be heard was Karl Dirksen, 3322 Lake Street N.W. Mr. Dirksen said that erosion has occurred along the south shore of the Lake for the past ten years. He believed that it is the Park Department's responsibility to stabilize the shoreline, not the homeowners. Mr. Dirksen said with all the dollars spent on Cascade Lake, the City needs to take immediate action on the south shoreline.</p> <p>Jean DeWitz, 3146 Lake Street N.W. Ms. DeWitz asked that the City notify them of the materials being used when the berm is built between the two lakes.</p> <p>Denny Stotz, Park Department, said that the project has reached the point where they need to document what has taken place in the past 19 months. The plans he showed reflected the action of the Council at the August 15, 2004, regarding the lake configuration and the general park plan and also reflects the environmental impact statement approved at the November 15, 2004, meeting. He introduced the Project Manager from Bonestroo Rosene Anderlik & Associates, Rich Braasch, to summarize the work to date.</p> <p>Wishing to be heard was Rich Braasch, Project Manager from Bonestroo Rosene Anderlik & Associates. Mr. Braasch said that the water level for Manor Woods Lake currently shows the exposed ground water table and it can fluctuate if there are continued dry spells or not. He said that there should be no drop in the water levels because of the effort to isolate the creek from Cascade or Manor Woods Lakes. Mr. Braasch said that the materials to be used in the berm, as permitted by the Department of Natural Resources, will be inert (sandy and granular) materials to hold the water with a tighter core inside. Stabilization in the future will be along the south shore of Cascade Lake. Mr. Braasch then gave a brief overview of the project. The 230 acre park with a 100 acre lake will be used mostly for non-motorized and trolling boats to control surface water use. A 2-mile public trail system will go around the lake with linkages to regional trails. Most of the swimming and visitor areas will be in the southeast corner of the park. The majority of the rest of the park will passive recreation. He said that there are approximately 12,000 acres of highway/agricultural land draining to Interlachen Lake and another 6,500 acres coming down the north branch of Cascade Creek. If the creek was not isolated from the Lake, The resulting water quality of the lake would be poor. With the isolation of the creek, the water should be of a good swimming and fishing</p>

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quality. There will be approximately 8 acres taken from Manor Woods Lake to place the berm in a location that will separate the creek flow and allow for better water quality in both lakes.

Wishing to be heard was Joan DeWitz, 3268 Lake Street N.W. She has that they did water tests both in the Manor Woods Lake and the Mayo basin. She said that the water quality in Manor Woods Lake, even with Cascade Creek running into it, is a better quality than the Mayo basin. She said losing the 8 acres from Manor Woods Lake, not having the Creek run into Manor Woods Lake, makes them very concerned about the drop in the water levels. The south end of Manor Woods Lake now is only two to three feet deep. People along the Lake invested money in their homes to have the Lake, not cattails.

Wishing to be heard was Jean DeWitz, 3146 Lake Street N.W. Ms. DeWitz asked about the possibility of mining in Manor Woods Lake to create depth in the lake.

Denny Stotz, Park Department, said that Mathy Construction did some exploratory mining in Manor Woods Lake but said that the materials were not of commercial value. There have been no discussions on paying someone to mine the lake as it would take a substantial amount of money for the mining.

Gary Neumann, Assistant City Administrator, said that the intent of the berm was not to cause any harm to the Manor Woods Lake residents but to improve the water quality for all. The berm will cost many thousands of public dollars to construct. There is no intent at this time to dredge Manor Woods Lake which would also need to use public dollars.

Wishing to be heard was Joan DeWitz, 3268 Lake Street N.W. Ms. DeWitz wanted to again ask for assurances that the Manor Woods Lake would maintain good water quality when the City takes Cascade Creek out of it. The Mayo Basin has become stagnant in the past.

Wishing to be heard was Karl Dirksen, 3322 Lake Street N.W. Mr. Dirksen said when looking at the information provided by Denny Stotz, the City owns all of the south shoreline of Cascade Lake and approximately half of the bottom of Manor Woods Lake. If there are problems with water quality or the Lakes, it is the City's problem as much as those people living along Manor Woods Lake. The short-term view of ignoring a problem hoping it will go away is not long-term thinking. There has been no information provided on what the actual costs would be to dredge Manor Woods Lake. It should be provided to the neighbors. The City should consider what the cost of one area, perhaps the west end, would be to clean it out. That would mean that in 15-20 years from now the facility would still be a nice area to either live along or use as public access.

Wishing to be heard was Rory Lenton, 3238 Lake Street N.W. He agreed with what Mr. Dirksen said. The problems with the Lake are not only the residents problems but the City's as a good portion of Manor Woods Lake belongs to the City. The problems with Manor Woods Lake are coming from the direction of land that the City owns. The City should take care of it. This is to be public lake.

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	<p>Having no one further wishing to be heard, President Hanson closed the hearing.</p> <p>Councilmember Marcoux asked if there are different phases to the development of the Lake. Gary Neumann, Assistant City Administrator, said that the berm is just one phase. There will be different things affecting different neighborhoods.</p> <p>Councilmember Hruska said that he wasn't convinced that the diversion of Cascade Creek would help improve the water quality for the lakes. He said that we need to have more information about how we can assure that both of the lakes will have good quality water. Gary Neumann, Assistant City Administrator, said that Bonestroo Rosene Anderlik & Associates did a very extensive look in their study of what the water quality is now in the lake bodies, the size of the agricultural watershed and computer modeling on what is the expected water quality if the Creek continues to flow into Manorwoods Lake.</p> <p>Councilmember Marcoux moved, Nowicki seconded, to approve General Development Plan #251, initiated by the Rochester Common Council for the Cascade Lake Park Master Plan, that the General Development Plan will not be subject to expiring under Section 61.216 of the Land Development Manual, that there should be future public hearings scheduled prior to development of each phase of Park Development, and instructed the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order. Discussion.</p> <p>Councilmember Means said she was concerned about the residents on the west side of Manor Woods Lake and would like the City to support them and provide them the information that they need. Councilmember Marcoux asked that information from the Mathy Mining Company on the cost of dredging be provided to the residents of Manor Woods Lake.</p> <p>Ayes (6), Nays (1). Motion carried. Councilmember Hruska voted nay.</p>
F-2	<p>Councilmembers Hruska moved, Nowicki seconded, to table to the April 4, 2005, meeting action on amending Resolution No. #657-04 removing condition #4 from the original approval for Vacation Petition #04-14 by the Prow Company. Ayes (7), Nays (0). Motion carried.</p>
E-3	<p>A Hearing to Consider Applications to the Federal Transit Administration for transit assistance funds for Regular Route and Dial-A-Ride Services and the Purchase of up to Four Buses for Regular Route Services.</p> <p>Having no one wishing to be heard, President Hanson closed the hearing.</p> <p>Councilmembers Marcoux moved, McConnell seconded, to adopt Resolution No. 114-05 approving Applications to the Federal Transit Administration for transit assistance funds for Regular Route and Dial-A-Ride Services and the Purchase of up to Four Buses for Regular Route Services. Ayes (7), Nays (0). Motion carried.</p>

Agenda Item	
E-4	<p data-bbox="358 342 1433 441">A Hearing on Final Plat #05-08 to be known as Badger Hills Second Subdivision by Badger Hills LLC located north of Valleyhigh Road N.W., west of West Circle Drive and east of Kenosha Drive N.W.</p> <p data-bbox="358 476 1422 676">Wishing to be heard was Mac Hamilton, representing Badger Hills LLC. He noted agreement with the conditions with the exception of Condition #4. He said that Outlot A is a park and that is no problem to dedicate. The problem lies with Outlot B which connects to the Shelfbine property. The applicant doesn't want the mid-block pedestrian crossing for people from the commercially zoned areas coming into the development.</p> <p data-bbox="358 711 1433 945">Brent Svenby, Planning Department, said the mid-block pedestrian crossing should be left to allow for people in the subdivision to go east to their place of employment if they work there. Mr. Svenby also said that Outlot B was a condition for approval on the preliminary plat. Mr. Hamilton said that it was a condition but was indicated to the applicant that the outlot should be kept in until the status of the adjoining property is known. They want the park kept to the residents of the subdivision and not to workers in the commercial property.</p> <p data-bbox="358 980 1406 1113">Phil Wheeler, Planning Department Director, said that under City policy there has been no distinction between neighborhoods and commercial areas or other residential areas. Whenever blocks are long, there has been a requirement for mid-block connection.</p> <p data-bbox="358 1148 1403 1180">Having no one further wishing to be heard, President Hanson closed the hearing.</p> <p data-bbox="358 1215 1422 1482">Councilmember Means asked Mr. Hamilton the probable impact if the pedestrian crossing is left open. Mr. Hamilton said that there are examples in the immediate neighborhood, such as the former Celestica site. Upwards of 1200 employees are there and many use the park system in the Badger Ridge development for recreational and other purposes. If this mid-block connection is left in place, more people will be coming into the neighborhood to use the park than development residents using the businesses on the other side. This is only a five-acre neighborhood park.</p> <p data-bbox="358 1518 1422 1751">Councilmember Carr asked if the mid-block connection could be reduced to a 10-foot walkway rather than a 30-foot easement. Mike Nigbur, Public Works Department said that the 30-foot easement is the size used for many years. It provides for maintenance of the walkway and allows for ample space on each side to provide separation to the homes along the path. Gary Neumann, Assistant City Administrator, said that the City went to wider easements over a decade ago because people did not like the narrower easements next to houses.</p> <p data-bbox="358 1787 1390 1885">Councilmembers Means moved, Carr seconded, to adopt Resolution No.115-05 approving Final Plat #05-08 to be known as Badger Hills Second Subdivision by Badger Hills LLC with five conditions. Ayes (7), Nays (0). Motion carried.</p>

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E-5	<p data-bbox="355 344 1395 443">A Hearing on Appeal #05-01 by Loren and Victoria Fabian on Rochester Zoning Board of Appeals decision on Appeal #04-03 regarding the placement of fence within a bufferyard at McDonalds on North Broadway.</p> <p data-bbox="355 478 1443 611">Brent Svenby, Planning Department, summarized saying that the appeal by neighbors to the east (Fabians) is due to the placement of lighting fixtures in a ten-foot bufferyard and a fence placed five feet into a ten-foot bufferyard. The neighbor to the east is appealing the location of the lighting fixtures and the fence.</p> <p data-bbox="355 646 1446 1917">Wishing to be heard was Victoria Fabian, 20 12th Street N.E. She said that all she has heard through the entire appeal process is that McDonald's has done nothing wrong. She said that now they have exhaust fumes from McDonald's customers, people looking right into their house and inside the house is never dark. Ms. Fabian said that when the plans were submitted and approved by the Council, they thought that the plans would be followed. Mrs. Fabian said that the fence was to be placed next to the curb, ten feet six inches, from their property line. McDonalds did not want to place the fence at the curb as the bumpers of the cars would hit the fence. The Planning Department said to move the fence back from the curb two feet; McDonald's took five feet. She said the fence ended up 43 inches from their property line. Mrs. Fabian said that they did not know that the Planning Department could change what had been approved without notification to the neighbors. She said that they are in violation of the buffer code, RCO 63.260. Mrs. Fabian then addressed the commercial lights in the buffer zone. She said that there is no privacy and for two and one-half months the house was never dark. Until she and her husband raised objections about the fence, parking and lighting, nothing was done. She said that they believe that the two lights in the buffer zone need to be moved. From the back of the base of the light to the curb, the light by their house needs to be moved at least four feet six inches and the light by the dumpster needs to be moved 15 to 20 feet to allow for the garbage truck. She said that cost to move the lights should not be a factor. They have paid more than their share to make sure that their rights are not violated. Ms. Fabian said that McDonald's was to put up employee parking only signs on the west side of the fence near their house. It has not been done. McDonald's employees take all the street parking on 12th Street in front of our house. McDonald's employees discontinued parking on the street whenever McDonald's is under review by the City. As soon as the appeal is ruled on, the employees are back parking on 12th Street in front of the house. She said that there is something wrong when you can't park in front of your home. They went to the Planning Department prior to the curb being poured and the fence was built when it could have been easily moved but Planning allowed the changes to be made even after it was brought to their attention. Mrs. Fabian said that her home has been there since 1912, long before McDonald's came. The residents of Rochester are supposed to be protected by Planning and Zoning laws from business overrunning the residential neighborhoods. She said she believed that their rights have been violated. Mrs. Fabian also told the Council that they need to be making changes on ordinances and codes so that the same thing does not happen to any other Rochester resident. She said that fences should not be allowed closer than 15 feet and nothing should be allowed in the buffer zone but</p>

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landscaping. Whenever businesses meet with neighbors, a Councilmember should be present because it needs to be recorded. After approval, the business does not follow through with what was discussed with the neighbors.

Wishing to be heard was Steve Benick, 1021 Hickory Lane S.W., Project Manager for Benike Construction and representing Courtesy Corporation. Mr. Benick gave a summation of the project development, obtaining of permits and contact with the Planning Department prior to approval of the project by the City Council. He said that prior to the construction of the fence the Planning Department was contacted to confirm the bufferyard requirements and it was installed, using a professional surveyor, according to the Land Development Manual. When a complaint was received by Planning, work was halted on the fence for several days while the issue was researched. He said that from December of 2004 to March of 2005, the illumination of the light fixtures in the parking lot were reduced to less than the maximum permitted. It was discovered that two light poles were improperly placed on the west edge of the east bufferyard. A variance request was submitted to the Planning Department and approved by the Zoning Board of Appeals. He said that they have spent many thousands of dollars and at least three trips with a boom truck adjusting lights, tilting, panning, installing the glare guards and everything that they physically can to get it to the ordinance requirements for illumination at the property line. One of the last trips with the electricians was to remove one of two double fixtures on each of the light pole standards.

Wishing to be heard was Loren Fabian, 20 12th Street N.E. He said that the distance the lights would have to be moved to be brought out of the buffer zone would be 4 ½ feet for one and 15-20 feet for the other light. The plan that was submitted and approved was for the fence to be next to the curb and the lights are definitely not allowed in the bufferyard according to the zoning ordinance. He asked what good are the ordinances if they don't have to be followed.

Brent Svenby, Planning Department, said that the landscaping plan submitted by McDonald's showed a number of plantings in the buffer zone and shows the fence in the bufferyard. He said that the plans show a note from the landscaper that says that the fence should be moved five feet into the bufferyard. Mr. Fabian said that the note was not on the original plans and was put on there the day he obtained a copy of the plans.

Having no one further wishing to be heard, President Hanson closed the hearing.

Councilmember Nowicki said that the moving of the fence was unclear. Staff allowed the fence to be relocated because the plan calls for a fence and specifies what type of a fence, it does not say where it has to be. He said that the lights are clearly in error. The variance is allowed to correct an error. The Board of Appeals said that there is no detriment because it met the light standards. Councilmember Nowicki said that if the lights are to be moved, the City should pay for the cost.

Councilmembers Marcoux said that readings on the light output have been taken by the staff. In order to overturn the variance allowed, it must be detriment. The light illumination is under the maximum of the requirement of the ordinance. Moving it a

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few feet probably won't help the situation.

Councilmember Hruska said that the fence looks good, is a quality fence and locating it away from the curb allows for an overhang for parked vehicles which is important as well as for snow storage.

Councilmember Nowicki moved, Hruska seconded, to uphold the decision of the Board of Appeals on Appeal #05-01 by Loren and Victoria Fabian on Rochester Zoning Board of Appeals decision on Appeal #04-03 and instructed the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order. Ayes (6), Nays (1). Motion carried. Councilmember Carr.

Councilmembers Nowicki moved, McConnell seconded, to direct staff to re-initiate a change to RCO 63.260 that clarifies the position of a fence in the bufferyard that would allow for adjoining property owners input if the location so specified is to be changed. Ayes (7), Nays (0). Motion carried.

Councilmember Carr asked if there was a way to have McDonald's employees park against the fence. It would keep noise and fumes down against the property line.

Council President Hanson opened the public hearings for Items E-6, E-7, E-8, E-9 and Items F-1 and D-34. All testimony is pertaining to these items.

Councilmember Marcoux moved, Nowicki seconded, to remove D-34 from the table. Ayes (7), Nays (0). Motion carried.

A Hearing on Consideration to Rescind or Amend that portion of Official Street Map #12 lying in the City to modify the alignment of a future north/south collector road to be located between 40th Street S.W. and 48th Street S.W., west of TH63 and east of 11th Avenue S.W. and Willow Creek.

Wishing to be heard was Wade Neubauer, Yaggy-Colby Associates, representing West 80 Development. He said that when the design, geometrics and lane configuration for Commercial Drive were looked at, it was decided that only 38 feet from the center to the new right-of-way line making a total of 76 feet. Mr. Neubauer then said that the right-of-way for TH63 that MnDot platted is slightly different as shown on the official street map (map shows curve coming to point and MnDot shows no curve). He said that there really is no difference between Option A and Option D. Mr. Neubauer referred to Condition #5 on Item E-7, Final Plat for West 80. He has talked with Mike Nigbur, Public Works Department, regarding the condition and both have agreed that it should be deleted. Mike Nigbur concurred.

Richard Freese, Public Works Director, said that the location of the respective street center lines differs by less than 5 feet on the two maps for Option A and Option D.

Wishing to be heard was Chuck Diessner, 200 South Sixth Street, Minneapolis, Attorney for West 80. He said that West 80, Willow Creek Commons and the City of Rochester have relied on Option A for Official Street Map No. 12 for numerous

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approved applications and requests before the City. Those requests have included a number of items for Willow Creek Commons where Willow Creek Commons has agreed until December 7, 2004, to have the road aligned at Option A and to have the Official Street Map No. 12 amended for Option A. Based on Option A, the Council has approved the Preliminary Plat for West 80 with the street elevation. The Council recognized that the Official Street Map needed to be amended concurrently with the Final Plat. The Council granted vested rights to the West 80 group that if they complied with the conditions of the Preliminary Plat and filed a Final Plat consistent with meeting all of those conditions, the Council would then amend the Official Street Map No. 12 to match the Final Plat. Mr. Diessner said that they are requesting the Final Plat for West 80 Development be approved excluding Conditions #2 and #5. Mr. Neubauer from Yaggy Colby Associates has already addressed, and staff agreed, to remove Condition #5. Condition #2 deals with a conclusion by Richard Freese, Public Works Director, that there be documented arrangements for the alignment and for the final street elevation for the connection of Commercial Drive between the two properties. The staff has imposed Condition #2 and Mr. Diessner said they do not believe that is correct. Mr. Diessner handed out a listing of actions taken by Willow Creek Commons and West 80 dealing with the alignment of the road under Option A and the elevation of the road at 1069 feet. The objection to the elevation and alignment did not occur until December 7, 2004, when Mr. Kottschade sent a letter withdrawing his agreement to the alignment and elevation. He had agreed to the elevation and alignment that prior to the time the Preliminary Plat for West 80 was approved on February 18, 2004. At that time vested rights were given to West 80. As late as November 18, 2004, when West 80 was considering amending or revising their plat to move the road over 300 feet (Option B) they received a letter from Mr. Kottschade and Willow Creek that said there is an agreement for alignment at Option A, for elevation at 1069 and if anything different is done "I intend fully on pursuing all claims I have against West 80 for breach of contract". Mr. Diessen requested that, as an alternative to Condition #2, that a motion include a resolution clarifying this issue that in fact the grading plans and the construction plans as signed off by the City are, in fact, in full force of effect and do not need to be amended as suggested by the Council packet. This request is to replace Condition #2. Mr. Diessen said that, in regard to Willow Creek's application for the General Development Plan, Item E-8, the application be denied for the reasons stated. The GDP with Willow Creek cannot be amended and be consistent with the Preliminary Plat and Final Plat for West 80. In regard to the Preliminary Plat for West 80 Properties, Item F-1, the matter has been addressed in prior meetings. Mr. Carlson has withdrawn the request relied upon by Mr. Kottschade and Willow Creek Commons. Terry Adkins, City Attorney, has advised that only the Common Council can withdraw the preliminary plat for West 80. Mr. Diessen said that a developed agreement by West 80 has been executed and presented to the City. They are requesting approval of the agreement.

Wishing to be heard was John Arnold, Dunlap and Seeger, representing Willow Creek. Mr. Arnold said that the only agreement that had ever surfaced was one signed by Mr. Kottschade on June 10, 2003, never signed by West 80 or Mr. Carlson, agreeing to Commercial Drive alignment and property line grade of 1069 feet. February 18, 2004, Preliminary Plat approval for West 80 showed Condition

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#6 "Final Plat application shall be coordinated with an Amendment to Official Street Map No. 12. This Plat is contingent upon approval of an amendment to Official Street Map No. 12". The conditions for West 80 have not been met. On August 16, 2004, Willow Creek Commons was heard before the City Council for Preliminary Plat approval. At that meeting, the minutes show that Mr. Carlson wished to be heard regarding West 80. "He noted that he thought he had an agreement that he could provide fill for Willow Creek Commons site in exchange for grading of the Kottschade property. When the preliminary plat was submitted, the road was shown meeting the Kottschade property along through TH63. Since that time Mr. Kottschade no longer needs the fill due to a different alignment of TH63 and will not allow Mr. Carlson to grade his property to make the property lines contiguous. Mr. Carlson asked that the frontage road be moved back to the original location on his general development plan which makes a shorter roadway for his development." On August 25, 2004, there was a letter from Mr. Carlson to Mr. Freese, Public Works Department, noting the second paragraph stating "As and when we develop the north portion of our property, we will submit a preliminary plat and final plat in compliance with the official street map. We do not intend to proceed with the preliminary plat approved by the City on February 18, 2004, which proposed a location of Commercial Drive farther to the east. If you wish, you may consider our application to develop our property consistent with the February 18, 2004, action to be officially withdrawn. The same may be said of our amendment to the General Development Plan #159 approved on the same date. We have no present intent to develop the north portion of this property". Since that time, after we asked for City Council approval of their withdrawal, West 80 has come back saying that they withdraw West 80's withdrawal. Mr. Arnold said that every time West 80 is asked to say they have an agreement, and it's in their best interest, they say they have an agreement. Mr. Arnold said that the developer has done everything that the City has asked them to do. When West 80 withdrew their support and followed up with a letter of withdrawal at the August meeting, admittedly it may not withdraw their preliminary plat but it didn't solve the issue of the original condition in that plat that there be an amendment of the official street map. It is not consistent that the road location has to be Option A. When West 80 withdrew their agreement, Willow Creek Commons came up with a better plan. That plan, Option C was shown to the Council in December and was voted on to pursue 5 to 2. This is what our development plan is based on and we are requesting to amend. Option C provides for shorter roads, less construction costs for everyone, more developable land and less maintenance costs for the City. Mr. Arnold addressed Final Plat request by West 80. They want to have Condition #2 removed so that they don't have to meet the existing grade on the Kottschade property. Mr. Arnold said that Willow Creek Commons does not intend to touch their own property; what rights does West 80 have for Willow Creek Commons property. That is a private issue. Mr. Kottschade realized that in December 2004, there was no agreement between with West 80 on elevation. That is a private agreement between the two entities and has nothing to do with the City. Mr. Arnold said that they made it clear after the West 80 withdrawal, in writing, on August 25, 2004, that there was no agreement. West 80 has to live up the grade as it exists.

Wishing to be heard was Michele Caron, Project Manager, RLK Kuusisto, representing Willow Creek Commons. She provided a brief summary of the

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advantages and benefits to both West 80 and Willow Creek Commons as well as the public of Option C. Ms. Caron said that a very thorough analysis was done in December, with copies to the City Council, of an overview of Options A, B, and C. She noted that Option C follows smart growth principles by maximizing the commercial buildable areas which leads to an increase in gross leasable area. Option C also would provide for lower roadway costs for the public and makes roadways safer for the public. The access to the retail will be to the front so would eliminate fewer driveways along the road.

Wishing to be heard was Chuck Diessner, 200 South Sixth Street, Minneapolis, Attorney for West 80. Mr. Diessner said that it was implied by Mr. Arnold that West 80 has tried to extract money through the negotiations; that is not the case. The issue is Option C and the reason West 80 couldn't agree to it is that there is an 11-foot difference in grade. The West 80 property is 11 feet higher than the Willow Creek property. They expect West 80 to pay all the monies to bring the grade down. Missing is the requirement that Willow Creek Commons would have to match the abutting property's (West 80) elevation of 1110 or would have to have demonstrated other arrangements. Mr. Diessner clarified the dates for a demonstrated arrangement. Mr. Arnold referred to an agreement; that is not the City's staff requirement. The staff standard is that there has to be documented arrangements. In August 2003, West 80 wondered if there was a better way to do the development. At that point they looked at Option B. After the analysis, West 80 came to the conclusion that Option A was the most feasible, Mr. Kottschade had agreed to Option A, and it was the easiest resolution for a number of reasons. Then beginning in October 2003, West 80 submitted a grading plan showing an elevation of 1069. The Public Works Department approved the grading plan. On February 18, 2004, the Preliminary Plat was approved and was evidence that West 80 continued to go with the demonstrated arrangement for Option A. The revised grading plan was approved in March 2004. The summary of dates shows a continuing flow of Willow Creek Commons agreement to the same thing. There was confusion in the beginning. There is no confusion in what Willow Creek Commons and West 80 wanted beginning in September 2003. Mr. Diessner said that it has been pointed out that Option C is a less expensive option. Option C will have expensive maintenance costs for the City. The lengths of the road, Commercial Drive, plus the required public road cul-de-sac to serve the West 80 property is longer than Option A.

Wishing to be heard was John Arnold, Dunlap and Seeger, representing Willow Creek. Mr. Arnold said that if the problem of an 11-foot difference is the problem, they will split the difference, making it 5.5 feet for each developer on Option C. Mr. Arnold said that to say that this wasn't motivated by things other than money isn't true. In August 2004, West 80 decided that they didn't want to pursue Option A anymore. West 80 looked at Option B. At that time, Mr. Kottschade received an e-mail from Councilmember Hanson, at the time, saying that he had spoke with West 80 and they were willing to proceed. As soon as the approvals are received, Willow Creek will allow West 80 to grade on the property to make the site contiguous. West 80 will do this for a payment of \$1.5 million by Mr. Kottschae. Then West 80 decided to take back Option A.

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	<p>Wishing to be heard was Chuck Diessner, 200 South Sixth Street, Minneapolis, Attorney for West 80. Mr. Diessner said that they tried over a two week period of time to reach an agreement on Option C. There were two issues unresolved. One, West 80 offered to lower the elevation on their property by 5 feet, Mr. Kottschade would have to come up to 6 feet. That was refused by Mr. Kottschade. The second issue of disagreement was if the hill on the Willow Creek property could be removed by West 80. In order to fully remove the hill, known as the chimney, on their property and to meet the slope requirements by the City, West 80 had to go on Willow Creek property and remove part of the hill that may be remaining. They wanted permission to remove the hill, at their expense, and meet the grading requirements of the City, and develop the property. That was refused by Mr. Kottschade.</p> <p>Wishing to be heard was Frank Kottschade, 4719 Warwick Lane N.W., developer of Willow Creek Commons. He noted a letter dated February 11, 2004, on Fredrickson Law Firm letterhead consisting of seven pages signed by Charles Diessner, addressed to John Arnold and Terry Adkins, City Attorney. The letter recites the list of what West 80 wanted as far as negotiations were concerned. He said that the real issue is the chimney. The letter states that West 80 will pay to remove the chimney from his property and one-half of the cost from the Willow Creek Commons property, but not paying more than \$100,000. Mr. Kottschade said that the grading could exceed that amount by more than double. He said that the chimney removal will give West 80 a competitive advantage. They want to get the high dollars for the lots but not pay for the subsidies required by the major retail anchors that Mr. Kottschade said he will be bringing in.</p> <p>Having no one further wishing to be heard, President Hanson closed the meeting.</p> <p>Councilmember Marcoux moved, Hruska seconded, to deny the request from West 80 to deny withdrawal of West 80 Preliminary Plat. Ayes (7), Nays (0). Motion carried.</p> <p>Councilmembers Hruska moved, Marcoux seconded, to adopt Official Street Map No. 12 with Option A. Discussion.</p> <p>Councilmembers Hruska and Marcoux both said that past history was based on Option A and that is the best option to move on. Councilmembers Nowicki, Means and McConnell felt that Option C was superior in street route patterns.</p> <p>Upon Roll Call, Councilmembers Carr, Hruska, Marcoux, and President Hanson voted aye and Councilmembers McConnell, Means and Nowicki voted nay. Ayes (4), Nays (3). Motion carried.</p>
E-7	<p>A Hearing on Final Plat #03-05 by West 80 Development LLC, to be known as West 80 Development located along the west side of TH63 and along the north side of 48th Street S.W.</p> <p>All testimony received in Item E-6 pertains to this hearing.</p>

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	<p>Councilmembers Marcoux moved, Hruska seconded, to adopt Resolution No.115-05A approving Final Plat #03-05 by West 80 Development LLC, to be known as West 80 Development with six conditions, removing Condition #5 and replace Condition #2 with "West 80 Development's Grading Plan approved by the City on March 11, 2004, and the West 80 Construction Plans approved by the City on June 17, 2004, remain in full force and effect, and do not need to be revised and the elevation for Commercial Drive at the property line between West 80 Development and Willow Creek Commons is established at 1069 feet". Ayes (5), Nays (2). Motion carried. Councilmembers McConnell and Means voted nay.</p>
E-8	<p>A Hearing on Amendment to General Development Plan #214 known as Willow Creek Commons by Frank Kottschade located along the south side of 40th Street and along the west side of TH63.</p> <p>All testimony received in Item E-6 pertains to this hearing.</p> <p>Councilmembers Hruska moved, Marcoux seconded, to approve Amendment to General Development Plan #214 known as Willow Creek Commons by Frank Kottschade with 15 conditions including Conditions #14 and #15 as recommended by staff for Option A. Ayes (5), Nays (2). Motion carried. Councilmembers McConnell and Means voted nay.</p>
E-9	<p>A Hearing on Revised Land Subdivision Permit #04-25 by Willow Creek Commons LLC to be known as Willow Creek Commons located along the south side of 40th Street and along the west side of TH63.</p> <p>All testimony received in Item E-6 pertains to this hearing.</p> <p>Councilmembers Marcoux moved, Nowicki seconded, to approve Revised Land Subdivision Permit #04-25 by Willow Creek Commons LLC to be known as Willow Creek Commons with 11 conditions including Conditions #10 and #11 as recommended by staff for Option A and instructing the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order. Ayes (5), Nays (1), Abstain (1). Motion carried. Councilmember Means voted nay. Councilmember McConnell abstained.</p>
D-34	<p>Councilmembers Marcoux moved, Carr seconded, to adopt Resolution No. 116-05 approving the execution of a Development Agreement with West 80 Development, LLC for the West 80 Development subject to the modification of the agreement reflecting the amendment of Official Street Map #12 so as to incorporate Option A. Ayes (5), Nays (2). Motion carried. Councilmembers McConnell and Means voted nay.</p>
F-1	<p>See Item E-6 (Preliminary Plat for West 80 Properties)</p>
F-2	<p>See after Item E-2. (Vacation Petition #04-14 by the Prow Company)</p>

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F-3	<p>Barbara Huberty, Environmental and Regulatory Affairs Coordinator, Public Works Department presented the Annual MS4 Storm Water Permit Progress Report to the Council and audience. Ms. Huberty said that the annual report requirements must contain the Status of compliance with permit conditions, Appropriateness of the Best Management Practices (BMPs), Progress toward achieving Measurable Goals (MGs), Changes in BMPs and MGs and the scope of Activities planned for 2005. She covered topics ranging from public education and public participation, the number of illicit discharges, pre and post storm water management practices, housekeeping issues (such as sweeping of streets, repairing and replacing of catch basins), the budget review of the \$3,841,355 budget and the progress toward meeting each of the measurable goals.</p> <p>Wishing to be head was Ted Clikeman, 2038 16 ½ Street N.W. Mr. Clikeman asked about the funding. The storm water fee has collected over \$3 million. In 2003 the budget was \$2.4 million; the budget in 2004 was \$2.9 million. He said that it seemed that the budget was set on anticipated revenue from taxes. The fee that will now be collected will more than cover the expenditures. Where do the tax collection monies go? Mr. Clikeman also asked why the sidewalk specifications do not require a contractor to replace the sod along the sidewalk area an inch below the sidewalk. This would allow runoff from the sidewalk to be absorbed by the soil. Most sidewalks become mud in the summer and ice in the winter time because the potential for runoff into the soil is not present.</p> <p>Richard Freese, Public Works Director, said that Local Government Aid cuts have reduced the available dollars to support the federal/state mandated stormwater program. Barb Huberty said that the fee covers programs that have previously been paid by other general fund revenues of which part were taxes. Gary Neumann, Assistant City Administrator, said that not all the costs were in the program before. We are doing considerably more that had not been done previously. Levy limits do not allow the City to tax residents to even cover the growth of the community.</p>
G-2a	<p>An ordinance amending Official Street Map Number 12 concerning the proposed right-of-way for the interchange of trunk highway 63 with 40th Street and 48th Street S.W., and S.E., in the City of Rochester, Minnesota, and repealing Ordinance No. 3492 was given a first reading.</p>
G-3a	<p>An Ordinance Amending and Reenacting Clause C of Subdivision 2 of Section 63.222 and Section 63.226 of the Rochester Code of Ordinances, Relating to Residential Development Signs, was given a second reading. Councilmembers Marcoux moved, Hruska seconded, to approve the Ordinance as read. Ayes (7), Nays (0). Motion carried.</p>
G-3b	<p>An Ordinance Amending and Reenacting Section 61.222 of the Rochester Code of Ordinances, Relating to the Land Division Process, was given a second reading. Councilmembers Marcoux moved, Hruska seconded, to approve the Ordinance as read. Ayes (7), Nays (0). Motion carried.</p>

RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA
Regular Adjourned Meeting No. 8 - March 21, 2005

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Having no further business, Councilmembers Marcoux moved, McConnell seconded, to recess the meeting to 4:00 P.M. on March 28, 2005. Ayes (7), Nays (0). Motion carried.


City Clerk